

EMINENT DOMAIN

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to eminent domain.

Highlighted Provisions:

This bill:

▶ clarifies an exclusion from a public use relating to trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses for which eminent domain may not be used;

▶ excludes emergency access ways as a public use for which eminent domain may be used;

▶ excludes certain parks from the scope of what is a public use for purposes of eminent domain;

▶ prohibits the taking of property by eminent domain if the effect is to divide an owner's property into separate parcels divided by the taken property unless one side or another of the owner's property is also taken to the property line; and

▶ expresses legislative intent concerning S.B. 117 passed during the 2006 General Session.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **78-34-1**, as last amended by Chapter 358, Laws of Utah 2006

31 ENACTS:

32 **78-34-3.5**, Utah Code Annotated 1953

33 **Uncodified Material Affected:**

34 ENACTS UNCODIFIED MATERIAL

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **78-34-1** is amended to read:

38 **78-34-1. Uses for which right may be exercised.**

39 Subject to the provisions of this chapter, the right of eminent domain may be exercised
40 in behalf of the following public uses:

41 (1) all public uses authorized by the Government of the United States[-];

42 (2) public buildings and grounds for the use of the state, and all other public uses
43 authorized by the Legislature[-];

44 (3) (a) public buildings and grounds for the use of any county, city [~~or incorporated~~],
45 town, or board of education;

46 (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the
47 use of the inhabitants of any county [~~or~~], city, or [~~incorporated~~] town, or for the draining of any
48 county, city, or [~~incorporated~~] town;

49 (c) the raising of the banks of streams, removing obstructions [~~therefrom~~] from
50 streams, and widening, deepening, or straightening their channels;

51 (d) bicycle paths and sidewalks adjacent to paved roads;

52 (e) roads, streets, and alleys for public vehicular use, excluding:

53 (i) trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other
54 recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or
55 walkway; and

56 (ii) paths, lanes, or other ways for emergency access; and

57 (f) all other public uses for the benefit of any county, city, or [~~incorporated~~] town, or
58 [~~the~~] their inhabitants [~~thereof~~];

59 (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
60 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
61 logging or lumbering purposes, and railroads and street railways for public transportation[-];

62 (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
63 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
64 with water for domestic or other uses, or for irrigation purposes, or for the draining and
65 reclaiming of lands, or for the floating of logs and lumber on streams not navigable, or for solar
66 evaporation ponds and other facilities for the recovery of minerals in solution[-];

67 (6) roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to
68 facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries,
69 coal mines or mineral deposits including minerals in solution; outlets, natural or otherwise,
70 for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for
71 the reduction of ores, or from mines, quarries, coal mines or mineral deposits including
72 minerals in solution; mill dams; gas, oil or coal pipelines, tanks or reservoirs, including any
73 subsurface stratum or formation in any land for the underground storage of natural gas, and in
74 connection therewith such other interests in property as may be required adequately to
75 examine, prepare, maintain, and operate such underground natural gas storage facilities; and
76 solar evaporation ponds and other facilities for the recovery of minerals in solution; also any
77 occupancy in common by the owners or possessors of different mines, quarries, coal mines,
78 mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the
79 flow, deposit or conduct of tailings or refuse matter[-];

80 (7) byroads leading from highways to residences and farms[-];

81 (8) telegraph, telephone, electric light and electric power lines, and sites for electric
82 light and power plants[-];

83 (9) sewerage of any city or town, or of any settlement of not less than ten families, or
84 of any public building belonging to the state, or of any college or university[-];

85 (10) canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and
86 storing water for the operation of machinery for the purpose of generating and transmitting
87 electricity for power, light or heat[-];

88 (11) cemeteries and public parks[-], except for a park whose primary use is:

89 (a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

90 (b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
91 equestrian use;

92 (12) pipe lines for the purpose of conducting any and all liquids connected with the
93 manufacture of beet sugar[-]; and

94 (13) sites for mills, smelters or other works for the reduction of ores and necessary to
95 the successful operation thereof, including the right to take lands for the discharge and natural
96 distribution of smoke, fumes and dust therefrom, produced by the operation of such works;
97 provided, that the powers granted by this subdivision shall not be exercised in any county
98 where the population exceeds [~~twenty thousand~~] 20,000, or within one mile of the limits of any
99 city or incorporated town; nor unless the proposed condemner has the right to operate by
100 purchase, option to purchase or easement, at least [~~seventy-five per cent~~] 75% in value of land
101 acreage owned by persons or corporations situated within a radius of four miles from the mill,
102 smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius;
103 nor as to lands covered by contracts, easements or agreements existing between the condemner
104 and the owner of land within said limit and providing for the operation of such mill, smelter or
105 other works for the reduction of ores; nor until an action shall have been commenced to restrain
106 the operation of such mill, smelter or other works for the reduction of ores.

107 Section 2. Section **78-34-3.5** is enacted to read:

108 **78-34-3.5. Dividing an owner's property by an acquisition by eminent domain.**

109 A person may not acquire property by eminent domain if the acquisition has the effect
110 of dividing an owner's property into separate pieces divided by the acquired property unless the
111 person also acquires the rest of the owner's property on one side or the other to the owner's
112 property line.

113 Section 3. **Legislative intent.**

114 (1) During the 2006 General Session, the Legislature passed S.B. 117, Eminent
115 Domain Amendments, which, among other things, amended Section 78-34-1 of the Utah Code
116 relating to the public uses for which eminent domain may be exercised. One of the changes to
117 Subsection 78-34-1(3) made by S.B. 117 was the addition of language to indicate that trails,
118 paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreation uses are
119 excluded from the public uses for which eminent domain may be used.

120 (2) The change to Subsection 78-34-1(3) made by S.B. 117 was intended as a

121 reaffirmation of then existing law and was an effort to state explicitly an existing principle of
122 eminent domain that had not previously been as explicitly stated. A clarification of the intent
123 behind the change to Subsection 78-34-1(3) will benefit all those applying and interpreting this
124 provision of the Utah Code.

125 (3) The Legislature viewed Section 78-34-1, before the passage of S.B. 117 from the
126 2006 General Session, as excluding trails, paths, or other ways for walking, hiking, bicycling,
127 equestrian use, or other recreational uses, from the public uses for which eminent domain may
128 be used.

129 (4) In passing S.B. 117, it was the intent of the Legislature that the addition of new
130 language to Subsection 78-34-1(3) after the word "alleys" was to reaffirm the existing law and
131 to state explicitly those enumerated exclusions that had not previously been as explicitly stated.

Legislative Review Note
as of 1-19-07 11:22 AM

Office of Legislative Research and General Counsel

H.B. 334 - Eminent Domain

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill may result in additional costs to local governments involved in eminent domain actions. The impact to individuals and businesses would depend on the nature of particular actions.

1/29/2007, 8:09:09 AM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst